In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1087

JOHN RODNEY CARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner's claims relate to the denial of a speedy trial, the court's restriction on the introduction of evidence before the jury relating to the speedy trial question and the government's alleged failure to disclose the names of government witnesses.

After a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted on three counts of mail fraud, in violation of 18 U.S.C. 1341. Concurrent sentences of imprisonment for three years were imposed. The court of appeals affirmed (Pet. App. A).

1. Petitioner was originally arrested on December 12, 1969, and released on bail. On April 27, 1971, the charges against him were dismissed and his bail money refunded.

On July 22, 1971, petitioner was indicted. He was tried January 17-26, 1972. Petitioner urges that he "suffered a specific and positive and definite prejudicial effect from the delay by being duped into believing that the government had chosen not to prosecute, and then losing or destroying certain material records" (Pet. 12). Nowhere has petitioner stated what those records were, whether they were lost or destroyed, or in what way he was prejudiced by their unavailability. A period of only three months elapsed between dismissal of the charges on April 17, 1971, and the return of the indictment on July 22, 1971, six months before the date of trial. It nowhere appears why petitioner destroyed documents, if he did, during these three months. He does not claim that the government made any representations to him regarding the dismissal of charges and subsequent indictment. Nor did petitioner ever make any demand for a speedy trial. As the court below held, petitioner has not shown any denial of his Sixth Amendment rights (Pet. App. 18). *Barker* v. *Wingo*, 407 U.S. 514. In this regard, he raises no issue of general importance warranting review by this Court.

2. The question whether petitioner's right to a speedy trial had been denied was a matter for the court, not the jury; the trial court therefore properly refused to allow petitioner to inquire, before the jury, into the prosecuting attorney's alleged negligence in dismissing the original complaint (Pet. App. 19). The trial court did not, in any event, preclude petitioner from showing the loss or destruction of records necessary for his defense.

3. As the opinion below points out, the district court required that the government name its witnesses, before trial, and the government did so. Petitioner has failed to show non-compliance with the court's order (Pet. App. 18).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1973.